STATE OF MICHIGAN

COURT OF APPEALS

BEAU PRE' INC.,

Plaintiff-Appellant,

v

GEORGE ROSS, ELIZABETH ROSS, WILLIAM R. RUSH, EILEEN V. RUSH, CURTIS E. NASH, MARGARET ARNOLD NASH, ARTHUR PERIARD, NANCY D. STORCH and THOMAS A. STORCH, Trustees of the STORCH FAMILY TRUST, and ELIZABETH V. ROSS, EILEEN RUSH, NANCY D. STORCH, RICHARD ALLEN, and SAMUEL STAPLES, Directors of the BEAU PRE' HOMEOWNERS ASSOCIATION,

Defendants-Appellees,

and

BEAU PRE' HOMEOWNERS ASSOCIATION,

Defendant.

UNPUBLISHED
March 16, 2006

No. 265195
Isabella Circuit Court
LC No. 04-003458-CH

Before: Neff, P.J., and Saad and Bandstra, JJ.

PER CURIAM.

Plaintiff, the corporate fee owner of a unit in the defendant condominium association, appeals as of right from the circuit court's order granting summary disposition to defendants, the directors of, and several co-owners within, that condominium association.[1] We affirm. This appeal is being decided without oral argument in accordance with MCR 7.214(E).

[1] The association itself, which is not participating in this appeal, was named as a nominal defendant.

This case arises from plaintiff's objections to the assessment and expenditure of certain association funds. The litigation concerns payment of what plaintiff estimates as $25,000, drawn from both the monthly and special assessments, to replace the roofs of five units, some of which were owned by individual directors. But plaintiff states that "the thrust of the lawsuit" is that "other planned-for and required maintenance of the common elements was jeopardized by the roofing expenditure."

The bylaws of the condominium association authorize the board of directors to "manage and administer the affairs of the condominium project and the common elements thereof," and to "collect assessments from the members of the Association and to use the proceeds thereof for the purposes of the Association." The master deed of the project states that general common elements are those that "all co-owners have an equal right to access and a duty to maintain," and includes roofs among its examples. Limited common elements are those "reserved for the use of less than all of the co-owners," including interior surfaces and driveways. The master deed states that the regular maintenance assessment for "all common expenses . . . shall be assessed monthly by the Association against the condominium units in equal proportion to the number of units in the project."

Article II, § C of the bylaws authorizes monthly and special assessments as follows:

> (1) The Board of Directors . . . shall establish an annual budget in advance for each fiscal year and such budget shall project all expenses for the forthcoming year which may be required for the proper operation, management and maintenance, repairs and replacement of those common elements which must be replaced on a periodic basis. These projected expenditures must be established in the budget and must be funded by regular monthly payments as set forth in Section D of this Article II, rather than by special assessments. At a minimum, the reserve fund shall be equal to ten percent (10%) of the Association's current annual budget, on a noncumulative basis. Such ten percent (10%) minimum standard may prove to be inadequate. The Board of Directors and co-owners should carefully analyze their Condominium Project to determine whether a greater amount should be set aside, or whether additional reserve funds should be established for other purposes. Upon adoption of an annual budget by the Board of Directors, copies of said budget shall be delivered to each co-owner and the assessment for said year shall be established based upon said budget. Should the Board of Directors at any time determine, in the sole discretion of the Board of Directors that the assessment levied are or may prove to be insufficient: (a) to pay the costs of operation and management of the Condominium Project, (b) to provide replacements of existing common elements, (c) to provide additions to the common elements not exceeding $2,000.00 annually, or (d) in the event of emergencies, the Board of Directors shall have the authority to increase the general assessment or to levy such additional assessment or assessments as it shall deem to be necessary.

> (2) Special assessments, in addition to those required in subparagraph (1) above may be made by the Board of Directors from time to time and approved by the co-owners as hereinafter provided to meet other needs or requirements of the Association, including, by way of example and not as limitation, (a) assessments for capital improvements or additions at a cost exceeding $2,000.00 per year, (b) assessments for the purchase or lease of a unit . . . , (c) assessment to purchase a unit upon foreclosure of the lien for assessments . . . , (d) assessments to purchase a unit for use as a resident manager's unit, or (e) assessments for any other appropriate purpose not elsewhere herein described. Special assessments referred to in this subparagraph (2) (but not including those assessments referred to in subparagraph c(1) above which shall be levied in the sole discretion of the Board of Directors) shall not be levied without the prior approval of more than sixty (60%) percent of all co-owners in number and in value.

In 2002, the membership approved a monthly assessment of $225, plus a special assessment of $500. In that same year, the board of directors arranged for the replacement of the roof of unit 1, apparently using funds drawn from both funding sources, without arousing dissension. However, in response to expert advice that units 2 through 6 also needed new roofs, the board again drew from both sources of funds to have that work done.

Plaintiff filed suit, challenging this action as an unauthorized expenditure of monthly assessments on repair or replacement of limited common elements, or as a violation of the bylaws affected for the benefit of the owners of the units involved. Thereafter, the board convened a special meeting, at which the participating co-owners and proxies voted unanimously to approve the amended budget with the provision for roof replacement. Plaintiff then amended its complaint to include a count requesting invalidation of that vote, on the ground that it "constituted a conflict of interest in that the outcome of the voting was an attempt to purge . . . liability in this case."

On cross-motions for summary disposition, the trial court found for defendants, concluding that the association was contractually obliged to see to the maintenance of the roofs, and that the unanimous vote to approve funds for that purpose rendered moot objections to which funds were used for that purpose. We agree.

We review a trial court's decision on a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). "In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Walsh v Taylor,* 263 Mich App 618, 621; 689 NW2d 506 (2004). Contract interpretation likewise presents a question of law, calling for review de novo. *Archambo v Lawyers Title Ins Corp*, 466 Mich 402, 408; 646 NW2d 170 (2002).

The various parts of a contract should be read together. See, e.g., *JAM Corp v AARO Disposal, Inc*, 461 Mich 161, 170; 600 NW2d 617 (1999). Reading these two parts of article II together suggests that special assessments for things other than common elements require 60 percent approval from the co-owners, but that such assessments to supplement monthly assessments for maintenance of common elements are at the board's sole discretion. We

harmonize the provision in subparagraph (1) for levying "additional assessment or assessments" to "provide replacements of existing common elements," with the language stating that common elements are to be maintained from the monthly assessments "rather than by special assessments," by regarding the "additional assessment or assessments" authorized therein as assessments available to the board at its sole discretion, rather than as among the special assessments requiring a supermajority of the co-owners as set forth in subparagraph (2).

Because roofs are explicitly included within the definition of general common elements, plaintiff's characterization of them as limited common elements for which the affected unit owners should bear responsibility is inapt. Accordingly, roof replacement should be funded by monthly assessments, as supplemented by others at the sole discretion of the board, as set forth in the bylaws' article II, § C(1). Although there was thus no need to resort to the supermajority procedures for approving a special assessment in this instance, the unanimous vote that took place obviated any issues arising from those special requirements.

Plaintiff points to evidence that the $500 special assessment at issue was originally intended for a comprehensive painting project. But the unanimous vote to use existing such funds for certain roofs was the equivalent of refunding the special assessments collected thus far, and then recollecting them under the rubric of a supplemental assessment in accordance with subparagraph (1), or a newly targeted special assessment in accord with paragraph (2). In light of that vote, to split hairs over the precise procedural developments behind that ultimate expenditure is to elevate form over substance.

Plaintiff additionally attacks that vote, insofar as those persons who stood to gain new roofs did not recuse themselves from voting in the matter. But plaintiff cites neither the specific association agreement, nor any general authority pursuant to statute or caselaw, for the proposition that a condominium project's co-owner or director must abstain from voting on any measure from which that person stands to receive some ostensibly direct benefit. We decline to hold as a matter of law that condominium issues may be voted upon only by such directors or co-owners as are devoid of personal interest in the outcome.

Plaintiff additionally complains that co-owners were assessed for the costs of the replacement of certain roofs without regard to the proportionality provisions of Article IV, § A(2)(b) of the bylaws, which states that "all other general and limited common elements . . . shall be borne by the Association and assessed by the Association to each co-owner according to the percentage of value assigned to his unit." However, roofs are not among the limited common elements for which co-owners have personal responsibility, but among the general common elements that are the responsibility of the association to maintain collectively, principally from monthly assessments determined "in equal proportion to the number of units in the project."

Plaintiff has failed to show that the trial court erred in granting summary disposition to defendants.

Affirmed.

/s/ Janet T. Neff
/s/ Henry William Saad
/s/ Richard A. Bandstra